

Message Text

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ACTION STR-05

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USMTN

ACTION STR FOR GREENWALD, LANDE, MATTHEISEN

EO 11652: N/A

TAGS: ETRD, GATT MTN

SUBJECT: FRAMEWORK GROUP -- PRE-PLenary DISCUSSION
OUTLINE ON BOP MEASURES

REF: (A) GENEVA 10388, (B) GENEVA 8836

1. SUMMARY. PURSUANT TO REF A, WE PROVIDE BELOW A "DISCUSSION OUTLINE" OF SPECIFIC PROPOSALS MADE BY US AND OTHERS IN FRAMEWORK GROUP (FG) AND ELSEWHERE ON BALANCE-OF-PAYMENTS SAFEGUARD MEASURES. NOTE THIS IS NOT, RPT NOT, THE DRAFT FG SUMMING-UP REFERRED TO IN REF A, BUT AN AGENDA WHICH WE WOULD PLAN TO USE FOR BILATERAL/PLURAL LATERAL WORKING SESSIONS ON THIS TOPIC OVER THE COURSE OF NEXT SEVERAL WEEKS, IN WHICH A DISCUSSION PAPER (OR EVEN "CONSENSUS DRAFT") COULD BE PRODUCED FOR FUTURE TABLING IN FG. END SUMMARY.

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2. AS INDICATED PARAS 3 AND 6 REF A, WASHINGTON AND GENEVA PREPARATIONS FOR IMPENDING PLENARY MEETING OF FRAMEWORK GROUP (NOW LIKELY TO BE HELD DECEMBER 7-9) WILL REQUIRE MORE SPECIFIC EXAMINATION OF WHAT WE WANT--OR MIGHT BE ABLE TO ACCEPT--ON EACH FG TOPIC. THUS, DRAWING UPON RECENT BILATERAL CONSULTATIONS ON FRAMEWORK (REF B) AS WELL AS STATEMENTS MADE IN PAST FG SESSIONS,

WE HAVE COMPILED THE FOLLOWING OUTLINE OF SPECIFIC PROPOSALS AND IDEAS PUT FORWARD BY US AND OTHER DELS ON FG TOPIC NO. 2 (BOP SAFEGUARD MEASURES).

3. NB: THIS IS NOT, RPT NOT, THE DRAFT FG SUMMING-UP REFERRED TO IN PARA 6, REF A (TO FOLLOW BY SEPTTEL), BUT RATHER A MORE COMPREHENSIVE, DETAILED BASIS FOR IN-DEPTH DISCUSSIONS ON THIS TOPIC BEFORE (AND AFTER DECEMBER FG PLENARY. NOTE ALSO THAT "SECOND HALF" OF TOPIC (ECONOMIC-DEVELOPMENT SAFEGUARDS) IS NOT TREATED IN DISCUSSION OUTLINE, SINCE BRAZILIAN PAPER PRESENTED LAST FEBRUARY IN FG CONSTITUTES THE ONLY "PROPOSAL" TO DATE DEALING WITH ALLEGED SHORTCOMINGS OF GATT ARTICLE XVIII.

4. DISCUSSION OUTLINE ON FRAMEWORK TOPIC NO. 2 ("THE FOLLOWING ARE ELEMENTS WHICH MIGHT BE CONSIDERED WITH REGARD TO POSSIBLE IMPROVEMENTS IN THE GATT FRAMEWORK FOR HANDLING SAFEGUARD MEASURES FOR BOP PURPOSES, AND ARE PRESENTED ON AN INFORMAL BASIS, WITHOUT PREJUDICE TO DELEGATIONS' POSITIONS," ETC., ETC.):

I. SUBSTANTIVE OBLIGATIONS FOR DEVELOPED COUNTRIES:

A. (US) A "BEST-EFFORTS" COMMITMENT TO AVOID TAKING ANY RESTRICTIVE TRADE MEASURES FOR BOP PURPOSES (LFD THUS, INTER ALIA, TO REFRAIN FROM EXERCISING ARTICLE XII RIGHTS).

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B. (1) (US) DEPARTURES FROM THIS BASIC OBLIGATION ONLY WHEN CERTAIN AGREED CONDITIONS HAVE BEEN MET.

(2) (EC) . . . IN ADDITION TO MEETING CONDITIONS AND CRITERIA OF ARTICLE XII AND OTHER RELEVANT GATT PROVISIONS.

II. SUBSTANTIVE OBLIGATIONS FOR LDC'S:

A. (EC) WHILE AFFIRMING RIGHT TO APPLY SURCHARGES OR DEPOSIT REQUIREMENTS FOR LEGITIMATE BOP PURPOSES (PROVIDED ELIGIBILITY CRITERIA OF ARTICLE XVIII:B ARE MET), AN OBLIGATION NOT TO APPLY THESE AND/OR QR'S CONCURRENTLY TO THE SAME PRODUCTS OR GROUPS OF PRODUCTS.

III. GENERAL OBLIGATIONS:

WHEN IMPOSED, WHETHER BY A DC AS A DEPARTURE FROM ABOVE OBLIGATIONS OR AS A "LEGITIMATE" ACTION TAKEN BY AN LDC, A BOP TRADE MEASURE WILL:

A. (US) BE SUBJECT TO AGREED PROCEDURAL STEPS (SECTION IV BELOW);

B. (1) (US) WILL BE FOR A TEMPORARY PERIOD;

(2) (EC) WILL BE ATTENUATED AS THE SITUATION
IMPROVES AND ELIMINATED WHEN NO LONGER JUSTIFIED;

C. (US) WILL REFLECT A STRONG PRESUMPTION IN FAVOR
OF MEASURES THAT HAVE A LESS DISTORTING EFFECT ON TRADE
(I.E., SURCHARGES AND DEPOSITS);

D. (US) WILL, UNLESS AUTHORIZED UNDER OTHER GATT
PROVISIONS, BE NON-DISCRIMINATORY;

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F. (EC) WILL NOT INVOLVE CONCURRENT APPLICATION OF
DIFFERENT MEASURES TO THE SAME PRODUCTS OR GROUPS OF
PRODUCTS; AND

G. (1) (US) WILL NOT ADVERSELY AFFECT THE EXPORT
OPPORTUNITIES OF LDC'S TO A LARGER EXTENT THAN NECESSARY;

(2) (EC) WILL AVOID UNNECESSARY INJURY TO TRADE
AND ECONOMIC INTERESTS OF ANY OTHER PARTY BUT, WITH
RESPECT TO LDC'S, WILL BE APPROACHED IN THE SPIRIT OF
ARTICLE XXXVII:3(C) PRODUCT EXEMPTIONS;

(3) (NORDICS) MAY, UNDER CERTAIN CONDITIONS,

DEVIATE TEMPORARILY FROM THE PRINCIPLE OF NON-DISCRIMINATION (I.E., IN FAVOR OF LDC'S);

(4) (BRAZIL) WILL EXEMPT LDC'S FROM THEIR APPLICATION, EXCEPT IN UNUSUAL OR GRAVE CIRCUMSTANCES.

IV. PROCEDURAL/INSTITUTIONAL IMPROVEMENTS:
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A. (US) ANY COMMERCIAL-POLICY MEASURE TAKEN FOR BOP PURPOSES TO BE NOTIFIED.

B. (US) ANY CHANGES IN SUCH MEASURES--ESPECIALLY INTENSIFICATION--ALSO TO BE NOTIFIED.

C. (US) NOTIFICATION BY THIRD PARTIES IF COUNTRY APPLYING MEASURE FAILS TO DO SO WITHIN A REASONABLE PERIOD.

D. (1) (US) NOTIFIED MEASURES SUBJECT TO A FULL REVIEW BY GATT BOP COMMITTEE.

(2) (EC) . . . ALTHOUGH REVIEW IN FORA OTHER THAN THE BOP COMMITTEE SHOULD NOT BE PRECLUDED.

(3) (NORDICS) NOTIFIED MEASURES SUBJECT TO REVIEW PROCEDURES WHICH ARE UNIFORM FOR ALL DC'S.

E. (1) (US) FULL REVIEW MAY BE WAIVED IN EXCEPTIONAL CASES FOR LDC'S, WHEN SIMPLIFIED PROCEDURES MAY SUFFICE AND ARE APPROPRIATE.

(2) (EC) SIMPLIFIED PROCEDURES TO BE APPLIED PRIMARILY FOR COUNTRIES IN VERY EARLY STAGES OF DEVELOPMENT WHICH ARE INADEQUATELY EQUIPPED TO DEAL ADMINISTRATIVELY WITH FULL-FLEDGED CONSULTATION.

(3) (BRAZIL) SIMPLIFIED PROCEDURES TO BE APPLIED AS A RULE FOR ALL LDC'S, UNLESS OTHERWISE REQUESTED BY THE CONSULTING COUNTRY.

V. ELEMENTS OF MULTILATERAL REVIEW:

A. (US) APPRAISAL OF MEASURES IN TERMS OF GATT
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CONFORMITY;

B. (US) THE OPERATION OF THE TRADE MEASURES AS A WHOLE;

C. (US) LIMITATIONS WITH REGARD TO THE COUNTRY'S FLEXIBILITY IN ADJUSTING TO DISTURBANCES IN THE INTERNATIONAL ECONOMY;

D. (US) . . . AND, SPECIFICALLY, THE FLEXIBILITY OF AN LDC TO ADJUST ITS EXCHANGE RATE;

E. (1) (NORDICS) IMPLICATIONS OF TRADE RESTRICTIONS IMPOSED BY OTHER COUNTRIES THAT MAY HAVE PRECIPITATED THE SPECIFIC ACTION IN QUESTION;

(2) (US) . . . AND, IN THE CASE OF LDC MEASURES, AN EXAMINATION OF LONG-TERM IMPORT RESTRICTIONS MAINTAINED BY OTHERS;

(3) (BRAZIL) . . . PLUS IN-DEPTH ANALYSIS OF THE OVERALL TRADE SITUATION OF AN LDC.

F. (EC) THE EXTENT TO WHICH A COUNTRY HAS CONTRIBUTED TO ITS OWN BOP DIFFICULTIES AS A RESULT OF PRODUCTION/EXPORT POLICIES.

G. (US) AN EXAMINATION OF WHETHER ALTERNATIVE TRADE MEASURES OR ADJUSTMENTS TO REDUCE DISTORTIONS MIGHT BE POSSIBLE; AND

H. (EC) THE EXTENT TO WHICH MONETARY MEASURES INVOLVE COMMERCIAL ASPECTS THAT FALL WITHIN THE PROVINCE OF GATT.

I. (1)(US) AS AN INPUT TO THE REVIEW PROCESS, THE LIMITED OFFICIAL USE

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GATT SECRETARIAT SHOULD PROVIDE A DESCRIPTION AND OBJECTIVE ANALYSIS--PREFERABLY QUANTIFIED--OF TRADE ASPECTS, INCLUDING THE EFFECT OF A MEASURE IN QUESTION ON THE TRADE OF LDC'S;

(2) (BRAZIL) SECRETARIAT TO PROVIDE OBJECTIVE, TRADE POLICY-ORIENTED STUDIES EVALUATING TRADE-RESTRICTIVE MEASURES BY OTHER COUNTRIES THAT MIGHT HAVE ADVERSELY INFLUENCED THE BOP SITUATION OF AN LDC;

(3) (BRAZIL) SECRETARIAT ANALYSIS ALSO TO INCLUDE POSSIBLE EXTERNAL CORRECTIVE MEASURES TO IMPROVE THE BOP SITUATION OF AN LDC.

J. (US) REVIEW PROCEDURES NOT TO PREJUDICE LEGAL RIGHTS OF ANY CP TO QUESTION GATT CONSISTENCY OF A BOP TRADE MEASURE AND IN NO WAY TO PRECLUDE RECOURSE UNDER APPROPRIATE GATT PROVISIONS.

VI. RESULTS OF REVIEW:

A. (1) (US) WHERE APPROPRIATE, THE (BOP COMMITTEE) LIMITED OFFICIAL USE

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(REVIEWING BODY) SHOULD RECOMMEND ALTERNATIVES OR ADJUSTMENTS TO A PARTY TAKING BOP ACTION.

(2) (BRAZIL) CONCLUSIONS TO BE FORMULATED BY BOP COMMITTEE, WITH SPECIAL CONSIDERATION GIVEN TO DEVELOPMENT, FINANCIAL AND TRADE NEEDS OF LDC'S;

(3) (BRAZIL) GIVEN CONCLUSIONS OF REVIEW IN BOP COMMITTEE, CP'S TO MAKE RECOMMENDATIONS WITH A VIEW TO INDIVIDUAL OR COLLECTIVE ACTION TO HELP REDRESS THE BOP SITUATION OF AN LDC.

B. (US) CONCLUSIONS REACHED IN THE REVIEW PROCESS TO BE REPORTED--PREFERABLY WITH SOME NARRATIVE DISCUSSION CONTAINING A CLEAR STATEMENT OF REASONS FOR CONCLUSIONS REACHED;

C. (US) HOWEVER, SUCH REPORTS TO BE VIEWED AS GENERAL GUIDELINES, NOT BINDING PRECEDENTS, FOR FUTURE CASES.

VII. FOLLOW-UP:

A. (US) COUNTRIES SHOULD, AS SOON AS PRACTICABLE, REPORT IN WRITING TO THE (BOP COMMITTEE) (REVIEWING BODY) WHAT STEPS HAVE BEEN TAKEN TO MEET RECOMMENDATIONS OR CONCLUSIONS MADE IN THE REVIEW PROCESS.

B. (1) (US) IF A COUNTRY WHICH IMPOSED A BOP MEASURE HAS NOT SO REPORTED WITHIN A REASONABLE PERIOD AFTER COMPLETION OF REVIEW, ANY INTERESTED PARTY MAY REQUEST BOP COMMITTEE TO REVIEW THE IMPLEMENTATION OF ITS RECOMMENDATIONS.

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(2) (BRAZIL) IF ACTION PURSUANT TO (CP'S) RECOMMENDATIONS IS NOT TAKEN, THE MATTER WILL BE URGENTLY EXAMINED BY CP'S, WHICH MAY DETERMINE THAT APPROPRIATE ADJUSTMENTS BE MADE IN FAVOR OF THE AFFECTED PARTY OR TAKE ANY OTHER JOINT ACTION TO REMEDY SITUATION.

5. WASHINGTON AGENCIES WILL NOTE THAT ABOVE OUTLINE REFLECTS "RE-PACKAGING" OF OUR 1976 PROPOSALS IN CG-18, COUPLED WITH POINTS MADE BY US AND OTHERS IN FG SESSIONS EARLIER THIS YEAR, PLUS SUGGESTIONS FLOATED IN RECENT FG BILATERALS (REF B AND SUPPLEMENTARY REPORT POUCHED STR). REACTIONS OF KEY DELS IN LATEST BILATERALS HAVE BEEN FAIRLY POSITIVE TOWARD "DUAL APPROACH" ON SUBSTANTIVE BOP OBLIGATIONS FOR DC'S AND LDC'S; IT IS GENERALLY RECOGNIZED, HOWEVER, THAT IMMEDIATE NEED IS FOR GREATER SPECIFICITY AND COHERENCE AMONG SEVERAL PROPOSALS MADE, FORMALLY OR INFORMALLY, BY VARIOUS DELS IN VARIOUS FORA.

6. UNLESS WASHINGTON SEES MAJOR DIFFICULTIES, THEREFORE, WE WOULD PLAN TO USE BOP DISCUSSION OUTLINE AS AN AGENDA FOR BILATERAL/PLURILATERAL WORKING SESSIONS OVER THE COURSE OF NEXT SEVERAL WEEKS, IN WHICH PROS AND CONS OF EACH ITEM WOULD BE DISCUSSED WITH KEY DELS, COMPROMISES OR ALTERNATIVES DEVELOPED WHERE POSSIBLE, AND AN ATTEMPT MADE TO BEGIN BRIDGING DIFFERENCES BETWEEN DELEGATIONS' POSITIONS. THESE WORKING SESSIONS SHOULD BE GEARED TOWARD PRODUCING A DISCUSSION PAPER--ULTIMATELY A "CONSENSUS DRAFT"--FOR TABLING IN A FUTURE (1978) FRAMEWORK GROUP PLENARY.

7. SIMILAR OUTLINES ON FG TOPICS NO. 3 (DISPUTE MANAGEMENT) AND NO. 5 (EXPORT RESTRICTIONS) WILL FOLLOW BY SEPTTELS--ALTHOUGH LATTER TOPIC REQUIRES SOME FURTHER REFINEMENT OF US THINKING AND MORE GENERAL TALK WITH GENEVA DELS BEFORE COMPARABLE SPECIFICITY CAN BE

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ATTEMPTED. TREATMENT OF FG TOPICS NOS. 1 AND 4 (S/D/
RECIPROCITY/GRADUATION) IS, OF COURSE, SUBSUMED UNDER
CURRENT TACTICAL QUESTIONS REGARDING EC "ENABLING CLAUSE"
APPROACH (PARA 4, REF A AND GENEVA 10103).

8. DRAFTED BY MARK. MCDONALD

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Message Attributes

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